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Statement of the Honorable Michael G. Oxley
Chairman, Subcommittee on Finance and Hazardous Materials
Hearing on Federal Barriers to Common Sense Cleanups
New York, New York - March 7, 1997

The hearing will come to order and the Chair recognizes himself for an opening statement.

First, I want to thank my colleagues for coming to New York. In particular, I would like to thank the Subcommittee's ranking Minority Member -- the "King of Queens," with all due respect to the Mayor -- for his cooperation and hospitality. Mr. Manton deserves a great deal of credit for bringing this hearing to New York today.

Today's hearing is about "Federal barriers to common sense cleanups." In plain, outside-the-beltway English, we will be examining how we can get toxic waste sites cleaned up faster so we can put the neighbors back into neighborhoods. Specifically, I hope to focus today on the issue of "brownfields." These are idled, or under-used industrial and commercial facilities where expansion or redevelopment is complicated by real or perceived environmental contamination.

It's been 17 years now since Congress passed the Comprehensive Environmental Response, Compensation and Liability Act, also known as "Superfund," to clean up the country's worst toxic waste sites. The legislation was largely a reaction to several high profile incidents in the late 1970s, including the Love Canal case in Niagara Falls, New York, where people were being exposed to environmental contamination without any Federal help.

Congress stepped in and passed the Superfund law. Under Superfund's liability rules, if you owned or operated a site where there was a release of a hazardous substance, or if you *currently* own or operate a site that has any contamination, you can be held liable for cleanup costs. For the lawyers, liability under Superfund is strict, joint and several, and retroactive. In layman's terms, it means if it's your mess, you pay.

It also means in some cases that if it's *not* your mess, you pay anyway. You can be held liable for the entire cost of a site cleanup even if you contributed only a small amount, even if your

actions were completely legal at the time. or even if your waste management practices were dictated by the government. Moreover, even those who contributed no contamination to a site -- who merely bought a previously contaminated property, even if they didn't *know* it was contaminated -- can be held fully liable for cleanup costs.

This liability has led to tragic consequences, including the potential that a completely innocent purchaser of property can be held liable for catastrophic environmental damage. Because of the potential for this kind of liability, potential developers won't touch sites with a history of industrial activity. It is simply not worth dealing with potentially huge environmental cleanup costs, particularly when there may be other areas available for development, like pristine "greenfields" where there is little or no potential for liability.

In the view of many, this *fear* of Superfund liability has created the brownfields epidemic across the country. EPA estimates that there may be as many as 500,000 brownfield sites nationwide. This epidemic poses continuing risks to human health and the environment, erodes State and local tax bases, hinders job growth, and wastes existing infrastructure. Moreover, the flight to develop "greenfields" adds to suburban sprawl, eliminating recreational and agricultural areas.

Congress has considered many proposals to combat these problems over the last several years, including my legislation from last Congress, H.R. 2500, the Reform of Superfund Act. Most recently, Representative Jim Greenwood of our Committee -- who unfortunately could not be with us here today -- introduced H.R. 873, the Land Recycling Act of 1997. The Greenwood legislation would, in my view, go a very long way toward solving the brownfields epidemic.

While Congress works to enact good *Federal* brownfields legislation, the States -- the laboratories of democracy -- are way out in front of us. Over thirty States, including New York, have now launched so-called "voluntary cleanup" programs. Under programs like New York's generally a party works with a State on a cleanup plan, the party does the cleanup, and then is released from further environmental liability at the site. A variety of States and EPA have testified that these State voluntary cleanup programs are responsible for the redevelopment of literally thousands of brownfields.

Part of our mission here today is to gauge the effectiveness of New York's program and find out what we can do on the Federal level to promote participation in it. I will be interested in what our witnesses have to say about the so-called "dual master" problem, where even if someone cleans up a site pursuant to an agreement with a State, there is still the risk the EPA could impose Federal liability. If sellers and developers face the uncertainty of having to go through cleanup twice, they may hesitate to enter into agreements with the States. If brownfields redevelopers could be confident that the cleanup decisions they agreed to with a State would not be second-guessed by EPA, maybe they would be more likely to agree to conduct a cleanup.

So this has been the short course on what we mean by "Federal barriers to common sense cleanups." We want to explore what we on the Federal level can do to promote cleanups of brownfields sites and make sure they don't stay contaminated indefinitely out of fear of federal law.

I look forward to the testimony of our witnesses today on these important issues and, again, thank our hosts here in New York for their hospitality.